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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

NEIGHBORS OF CAVITT RANCH et al., Plaintiffs and Appellants, v. COUNTY OF PLACER, Defendant and Respondent; BAYSIDE COVENANT CHURCH, Real Party in Interest and Respondent.	C040450 (Super.Ct.No. SCV11015)

APPEAL from a judgment of the Superior Court of the County of Placer, James D. Garbolino, Judge. Affirmed.

Farmer, Murphy, Smith & Alliston, and George E. Murphy; Law Offices of William D. Kopper and William D. Kopper for Plaintiffs and Appellants.

Valerie D. Flood, Deputy County Counsel, Office of Placer County Counsel, for Defendant and Respondent.

Morrison & Foerster and J. Michael Stusiak for Real Party in Interest and Respondent.

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* Pursuant to California Rules of Court, rules 976(b) and 976, this opinion is certified for publication with the exception of parts II, subdivisions B, C and D, III, IV, and V of the Discussion.

Defendant County of Placer (County) certified a final environmental impact report (FEIR) and approved a conditional use permit (CUP) allowing real party in interest Bayside Covenant Church (Bayside) to proceed with construction of church facilities on 34.6 acres of unimproved property between Sierra College Boulevard and Cavitt-Stallman Road in South Placer County. The Bayside construction was one of two undertakings reviewed in the draft environmental impact reports (DEIRs) prepared by the County. Neighbors of Cavitt Ranch, an association composed of nearby property owners, and Steven H. Gurnee, an individual property owner (collectively Neighbors), sought relief in superior court. The court denied their petition for writ of mandate.

On appeal, the Neighbors argue County did not comply with procedural requirements of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA).[1] Central to the procedural challenge is the Neighbors' claim CEQA required County to prepare separate environmental impact reports (EIRs) for Bayside's proposed construction and a residential development promoted by Elliott Homes, Inc. (Elliott), the former owner of both parcels. Alternatively, the Neighbors argue County's decision to approve the Bayside project is not supported by substantial evidence. They also maintain the

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[1] Undesignated statutory references are to the Public Resources Code. The CEQA Guidelines, set forth in California Code of Regulations, title 14, section 15000 et seq., are cited as "Guidelines."

project's inconsistencies with the Granite Bay Community Plan (GBCP) and the Placer County General Plan (General Plan) voided project approval.

We affirm the judgment for reasons we shall explain.

FACTUAL AND PROCEDURAL BACKGROUND

In August 1997, Elliott submitted its initial project application to the planning department, and sought approval to develop 209.3 acres of grazing land the company owned in South Placer County. The project had two elements. The first was Cavitt Ranch Estates, 31 residential/agricultural lots on the northern 174.7 acres. The second, Bayside Covenant Church, involved development of church facilities on the southern 34.6 acres.

Environmental review proceeded apace. County completed the initial study on September 5, 1997, and determined that an EIR would be required. The planning department, as lead agency, forwarded notice of preparation of a DEIR to the state clearinghouse, designated agencies, and interested parties on December 3, 1997. That document described the project as "a proposal for development of 31 single family residential-agricultural lots on 174.7 acres and development of a church on 34.6 acres." The 30-day public review period began on December 3, 1997.

Comments received from various agencies and nearby residents during public review of the Cavitt Ranch Estates and Bayside Covenant Church project were addressed in

"Administrative Draft No. 2 Environmental Impact Report" dated December 3, 1998, and the "[Draft] Environmental Impact Report" dated March 23, 1999 (collectively the CRE/BCC DEIRs). These documents explained that the Bayside portion of the project would be constructed in two phases "allowing development to coincide with growth of the congregation." Phase 1 included three buildings totaling 71,000 square feet, 926 parking spaces, driveways, and landscaping. Phase 2 consisted of three additional buildings totaling 102,000 square feet and 789 parking spaces. The 3,500-seat auditorium proposed in phase 2 would be used primarily for Sunday services. The CRE/BCC DEIRs identified areas of controversy relating to the Bayside portion of the project, including concerns that "the proposed church [was] too large for the location," that it "[would] generate too much traffic on local roadways," and it "conflict[ed] with GBCP policies." County published a notice of availability of the CRE/BCC DEIRs for public review on April 9, 1999.

County produced the final environmental impact report for both project elements on June 6, 2000 (the CRE/BCC FEIR). It issued a notice of public hearing before the planning commission on July 13, 2000, regarding the CRE/BCC FEIR, general plan amendment, and rezoning for Cavitt Ranch Estates. A corrected notice of public hearing assigned a new time for the July 13 hearing. It also included the following statement: "THIS HEARING WILL BE TO CONSIDER CERTIFICATION OF AN ENVIRONMENTAL DOCUMENT AND APPROVAL OF LAND USE ENTITLEMENTS ONLY FOR THE PROPOSED CAVITT RANCH ESTATES SUBDIVISION. COMMENTS AT THIS

HEARING SHOULD BE RESTRICTED TO ISSUES PERTAINING ONLY TO THE CAVITT RANCH ESTATES PROJECT." (Underscoring in original.) The notice continued: "A separate public hearing will be held at a future date to consider a separate environmental document for the Bayside Covenant Church and to consider the land use entitlement application for the Bayside Covenant Church project. The hearing for the Bayside Covenant Church will be duly noticed. The public will be provided with a full opportunity to submit comments pertaining to the Bayside Covenant Church prior to and at the hearing for that project."

The planning commission approved the Cavitt Ranch Estates development at the July 13, 2000, meeting, but denied Elliott's request for a variance. The planning commission's CEQA findings of fact and statement of overriding considerations dated July 2000 explained how County provided for separate consideration and approval of the two elements of Elliott's original project: "In the original version of the Draft EIR for the Project, the County simultaneously analyzed a separate project then under common ownership: the Bayside Covenant Church Project, which Elliott Homes has since sold to the Church proponents. Although the Final EIR [CRE/BCC FEIR], consisting mainly of comments and responses, continues to address both projects, the County has reissued a single Draft EIR [CRE DEIR] to address only the Cavitt Ranch project. This 'new' document is not really new, but rather largely consists of those portions of the original Draft EIR addressing only the Cavitt Ranch Estates project (with some additional information on project alternatives). The

County took this step to allow the two projects to be processed and considered separately, and to emphasize to the public that, though they were formerly under common ownership, and thus were related in that sense, the County has the power and authority to address them separately."

Elliott appealed the denial to the board of supervisors. Following a public hearing on September 19, 2000, the board approved Cavitt Ranch Estates with the variance, and certified the Cavitt Ranch Estates portion of the CRE/BCC FEIR.

Meanwhile, on August 16, 2000, Bayside filed its separate project application and request for a CUP as owner of the 34.6-acre parcel where the church facilities were to be built. County issued what it called "Reprinted Environmental Impact Report [for] Bayside Covenant Church" (BCC DEIR) on September 22, 2000. The introduction to the BCC DEIR explained: "This document is a reprint of the Draft EIR prepared and circulated for the Cavitt Ranch Estates and Bayside Covenant Church project. This document includes corrections and clarifications presented in the Final EIR. In response to public comments, Placer County has decided to consider the major components of the proposed project individually, i.e., the County will consider the proposed Bayside Covenant Church separately from the proposed Cavitt Ranch Estates residential subdivision. The adequacy of the CEQA environmental analysis as it pertains to each proposed development will be considered in conjunction with that project. Accordingly, this reprinted document only includes the portion of the original Draft EIR

that pertains to the Bayside Covenant Church project. A similar environmental document is being prepared for the Cavitt Ranch Estates project." County indicated it would "accept written comments on this Draft EIR during a CEQA mandated 45-day public review period."

County noticed the planning commission's October 11, 2000, public hearing on Bayside's part of the CRE/BCC FEIR and CUP. A memo from the planning department's review committee explained the revised procedure to the planning commission: "A Draft EIR was prepared for a joint development project, which included the recently-approved Cavitt Ranch Estates rural subdivision, located north of this site, and the proposed church site. Originally the County accepted the application as one development project since at the time, they were both under a single ownership and nearly contiguous, excepting for a single parcel (4± acres) that separated the two projects. However, the project site was later sold to the church and is now under separate ownership from the northerly portion. [¶] In order to allow the decision-makers and other interested parties an opportunity to consider each proposal independently, the Draft EIR has been reprinted to include only those portions applicable to each project. The Final EIR includes all the responses to comments received on the Draft EIR for both projects."

By this stage, Bayside had revised its development plans. The new phasing data described construction of 94,500 square feet of building space and 833 parking spaces in phase 1, and

construction of 78,500 square feet of building space and 516 parking spaces in phase 2. The planning commission voted four to three to deny the CUP "based on inconsistency with the Granite Bay Community Plan's policies regarding intensity of use and incompatibility with the adjoining rural residential neighborhood." It took no action to certify the CRE/BCC FEIR.

Bayside appealed the planning commission's adverse decision to the board of supervisors. County noticed the public hearing to be held on November 21, 2000. It described Bayside's project as the "development of a church campus, including six buildings (ultimate capacity for 5,000± persons) to be developed in two phases. **PHASE 1** is proposed to consist of three buildings (94,500± sq. ft.) -- a multi-purpose/gymnasium building and two meeting/classroom buildings. **PHASE 2** is proposed to consist of three buildings (78,000± sq. ft.) -- an auditorium and two multi-purpose/classroom buildings. Additional facilities include a softball/soccer field, a play area for pre-school children, and 1,550 parking spaces." (Bold print in original.)

During the board of supervisors' meeting, Bayside abandoned its two-phase plan to construct 173,000 square feet of church facilities, and sought approval for construction of only three buildings totaling 94,500 square feet. The board certified the Bayside portion of the CRE/BCC FEIR and granted the CUP by a vote of four to one. County filed its notice of determination on November 22, 2000.

Neighbors filed a timely petition for writ of mandate in superior court. They alleged numerous violations of CEQA and

local planning and zoning laws, and requested: (1) a peremptory writ of mandate ordering County to vacate its certification of the BCC FEIR, and (2) an order to set aside County's approval of the CUP.

The court denied the requested relief. Among other things, the court rejected the Neighbors' claim County violated CEQA by including two projects in one EIR and certifying the same EIR twice. It found that "[a]lthough the process used [] seems to be novel, it does not appear to have been either unauthorized or prejudicial to the [Neighbors'] interests. The fact that the Board of Supervisors certified the final EIR with regard to the housing project first did not necessarily bind them to approval of the same EIR with regard to the church property. It appears from the record that the Board of Supervisors understood that they had discretion whether to certify the final EIR with regard [to] the Church project or not, and exercised that discretion."

The Neighbors appealed. We denied their April 2002 request for immediate stay and petition for writ of supersedeas. On September 25, 2002, we denied the Neighbors' renewed petition for writ of supersedeas and motion for immediate stay of construction.

DISCUSSION

I

Standard of Review

The general question raised in this appeal is whether County's environmental review of the Bayside project involved

a prejudicial abuse of discretion. "'Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.'" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392, and fn. 5 (*Laurel Heights I*); see §§ 21168, 21168.5.) Under this standard, "'[t]he court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document.' [Citation.]" (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 392.) We apply the same scope and standard of review as the trial court, and its findings are not binding on us. (*Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1277 (*Fat*).)

The Neighbors urge us "to set a bright-line rule that the procedural irregularities of the type that occurred in this case are a *per se* violation of CEQA." We decline the invitation. The Legislature's statement of policy under CEQA expressly rejects both the conventional harmless error standard and a per se standard of prejudice. Section 21005 provides: "(a) . . . [N]oncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, *may* constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, *regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.* [¶] (b) . . . [I]n undertaking judicial review

pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principles that *there is no presumption that error is prejudicial*." (Emphasis added.) Whether a procedural violation involves a *prejudicial* abuse of discretion turns on whether the error resulted in the omission of relevant information from the environmental review process -- even where the information would not have altered the agency's ultimate decision to approve a project. (*Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1020-1021, 1023 (*Rural Landowners*); see also *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174.)

The California Supreme Court approved this line of reasoning in *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236-1237 (*Sierra Club*). In that case, the Department of Fish and Game denied timber harvesting plans submitted by Pacific Lumber Company (Pacific Lumber) after it refused to provide information on old-growth-dependent wildlife species. Pacific Lumber appealed to the Board of Forestry, which approved the plans on the incomplete record. (*Id.* at p. 1219.) The Sierra Club challenged the board's decision. (*Id.* at pp. 1225-1226.) The Supreme Court explained that courts will set aside an agency decision "[o]nly if the manner in which an agency failed to follow the law is shown to be prejudicial, or is presumptively prejudicial, as when the department or the board fails to comply with mandatory procedures, . . ." (*Sierra Club, supra*, at p. 1236.) The court held that prejudice was

presumed where "[t]he absence of any information regarding the presence of the four old-growth-dependent species on the site frustrated the purpose of the public comment provisions of the Forest Practice Act. [Citation.] It also made any meaningful assessment of the potentially significant environment impacts of timber harvesting and the development of site-specific mitigation measure impossible." (*Id.* at pp. 1236-1237.)

In determining whether an agency has complied with CEQA's procedural requirements, courts consider "'"whether an objective, good faith effort to so comply is demonstrated."'" (*Fat, supra,* 97 Cal.App.4th at p. 1277.) However, a good faith effort to comply with CEQA will not prevent a finding of prejudicial abuse of discretion where the agency's actions result in the *omission* of relevant information. (*Rural Landowners*, *supra*, 143 Cal.App.3d at p. 1022.) "While the guidelines allow for flexibility of action within their outlines, they are not to be ignored." (*Ibid.*)

We accord more deference to agency decisions on substantive questions, and "'resolve reasonable doubts in favor of the administrative finding and decision.'" (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 393.) "Substantial evidence" in the context of CEQA is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a).) Thus, "[a] court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion

would have been equally or more reasonable. [Citation.] A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so. Our limited function is consistent with the principle that 'The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind.'" (*Laurel Heights, I, supra*, 47 Cal.3d at p. 393.)

We review the interpretation and application of CEQA as questions of law. (*Fat, supra,* 97 Cal.App.4th at p. 1277.)

II

Procedural Requirements of CEQA

As we explained, the environmental review of the Bayside project involved two combined CRE/BCC DEIRs dated December 3, 1998, and March 23, 1999, the separate BCC DEIR prepared in September 2000 after Bayside acquired the church property, and the combined CRE/BCC FEIR dated June 6, 2000, certified by the board of supervisors on November 21, 2000.

The Neighbors allege County committed four procedural violations in its environmental review, and argue the process was prejudicial as a matter of law. Specifically, they allege County: (1) reviewed two unrelated projects in the CRE/BCC DEIR; (2) failed to recirculate the BCC DEIR before certifying the CRE/BCC FEIR; (3) failed to certify separate FEIRs for

Bayside Covenant Church and Cavitt Ranch Estates, and certified the same FEIR twice; and (4) violated CEQA's notice requirements.

Our task is to determine whether County complied with the requirements of CEQA, and, if not, whether its violations resulted in the omission of relevant information from the environmental review process. (*Sierra Club*, *supra*, 7 Cal.4th at pp. 1236-1237; *Rural Landowners*, *supra*, 143 Cal.App.3d at p. 1022.) Having carefully reviewed the record in light of the language of CEQA and the Guidelines, we conclude County's environmental review satisfied the procedural requirements of CEQA. In any event, none of the alleged violations deprived the public or local agencies of information relevant to the Bayside project. Accordingly, there was no abuse of discretion.

A. Two Projects/One EIR:

Our analysis of the Neighbors' first procedural challenge is limited to the question whether County violated CEQA by including both elements of Elliott's proposed development in one DEIR. We consider separately the propriety of County's actions after Bayside submitted its own project application to the planning department.

Section 21061 states that "[a]n environmental impact report is an informational document which, when its preparation is required . . . , shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the

effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."

CEQA defines "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which . . . [¶] . . . [¶] . . . involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." (§ 21065, subd. (c); *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 262.) The Guidelines elaborate on this definition of "project," stating it means "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, . . ." (Guidelines, § 15378, subd. (a).)

The Neighbors argue "[t]he two Projects, Bayside's Church and Cavitt Ranch Estates, cannot fit within the language of 'an activity', because they are not one activity. They are two different activities. Each project required vastly different governmental approvals." Neighbors cite Guidelines section 15161 and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316, which state that project EIRs examine the environmental impact of "a specific development project." They insist that under the "'plain meaning rule' both CEQA and the CEQA Guidelines should be interpreted so that the term

project includes one development activity undertaken by one person." Because the two elements of Elliott's original project were unrelated, the Neighbors say they required separate DEIRs.

Neighbors do not, however, cite any provisions of CEQA or the Guidelines that prohibit inclusion of two distinct project elements in a single DEIR. Nor do they argue that Bayside Covenant Church and Cavitt Ranch Estates elements had different direct or indirect impacts on the environment. Environmental impact is the fundamental question addressed by an EIR. (§ 21061.) Here, the 174.7-acre residential parcel and the 34.6-acre church parcel were situated along the same stretch of Sierra College Boulevard, separated by only a 4-acre parcel. As such, they comprised the whole of Elliott's proposed action at the time he submitted his initial project application. (Guidelines, § 15378, subd. (a).) The EIR focuses on environmental effects, and provides information to "every public agency prior to its approval or disapproval of a project." (§ 21061.) Thus, it is of no consequence that the two parts of Elliott's project sought different approvals and permits from the County. At worst, the inclusion of both elements in a single DEIR resulted in too much information regarding environmental effects, not too little.[2] We therefore conclude County did not violate CEQA in the circumstances of this case.

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[2] CEQA and the Guidelines encourage agencies to draft environmental documents in clear language and format. (§ 21003, subd. (b); Guidelines, §§ 15006, subds. (q) & (r), 15120, 15140.) One danger in providing too much information is that it

B. Failure to Circulate the Reprinted BCC DEIR:

Having decided County did not abuse its discretion by including both elements of Elliott's original project in the CRE/BCC DEIRs, we turn to the Neighbors' challenge to the procedures followed by County after Bayside submitted its separate project application to the planning department in August 2000. As we explained, the CRE/BCC FEIR was prepared in June 2000. Shortly thereafter, County reprinted separate DEIRs for Cavitt Ranch Estates and Bayside Covenant Church "to allow the decision-makers and other interested parties an opportunity to consider each proposal independently."

The Neighbors contend "[t]he County's error was to improperly create separate draft EIRs, not final EIRs, for the two projects and to not circulate those drafts to the public." The gist of their argument is that CEQA required County to begin the environmental review process anew, and recirculate the reprinted BCC DEIR, after Elliott sold the 36.4-acre parcel to Bayside.

Neighbors ignore the statute and regulations that govern recirculation, relying instead on sections 21080.4, 21082.1, 21092, subdivision (b)(1), 21161, and Guidelines section 15082, subdivision (a), which control notice of draft documents in the

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will confuse the reader. The Neighbors do not argue the public or the agencies were confused by County's inclusion of two elements of Elliott's proposed development project in a single DEIR. Their claims of confusion are directed to the alleged notice violations, and which hearings were to consider the Bayside project.

first instance. Guidelines section 15088.5, subdivision (a) states that the lead agency must recirculate an EIR "when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review . . . but before certification." (See also § 21092.1.) "Information" in this context "can include changes in the project or environmental setting as well as additional data or other information." (Guidelines, § 15088.5, subd. (a).) However, "[n]ew information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect . . . that the project's proponents have declined to implement." (*Ibid.*) "*Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.* [¶] . . . [¶] (e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record." (Guidelines, § 15088.5, subds. (b) & (e), emphasis added; see also *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132, 1135 (*Laurel Heights II*).)

The Neighbors argue the reprinted BCC DEIR "included several important changes." Specifically, they say it included a new section on the impact of Salmonoids, a new version of the chapter on project alternatives, and reference to a drainage

report not completed at the time the initial CRE/BCC DEIR was prepared.

We conclude there is substantial evidence to support County's decision not to recirculate the reprinted BCC DEIR. The material cited by the Neighbors added no "significant new information" regarding "a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect." (Guidelines, § 15088.5, subd. (a).) The new section labeled "Salmonoids" merely repeated and amplified slightly the response to a comment set forth in the CRE/BCC FEIR. The supplemental drainage report confirmed the earlier assessment that the recommended two to three additional box culverts under Sierra College Boulevard would not significantly increase water flow or require mitigation. The new chapter on project alternatives was substantially the same as the Bayside portion of the chapter on alternatives found in the CRE/BCC DEIR. Neither set of off-site alternatives would have eliminated significant unavoidable impacts. More importantly, the off-site alternatives were not feasible, because Bayside's consistent objective was development of a permanent church facility *in Granite Bay*. Accordingly, County was not required to address them in detail. (Guidelines, § 15126.6, subd. (f).)[3]

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[3] Guidelines, section 15126.6, subdivision (f) read, in part: "Rule of reason. The range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant

C. Failure to Comply With CEQA's Notice Requirements:

Section 21092 governs public notice, and reads, in part:

"(a) Any lead agency which is preparing an environmental impact report . . . shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report . . . .

"(b)(1) The notice shall specify the period during which comments will be received on the draft environmental impact report . . . , and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report . . . and all documents referenced in the draft environmental impact report . . . are available for review.

"(2) This section shall not be construed in any manner which results in the invalidation of an action because of the alleged inadequacy of the notice content, provided that there has been substantial compliance with the notice content requirements of this section."

The Neighbors contend the County violated CEQA notice requirements at all stages of the project hearings, and members

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effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. . . ."

of the public were misled and confused. They identify six notices that were defective.[4] Bayside responds that the Neighbors failed to exhaust their administrative remedies, and waived the notice issues on appeal by failing to raise them in the trial court. We conclude County substantially complied with CEQA notice requirements in the notices that are properly before us.

1. Exhaustion of Remedies:

"The [exhaustion of remedies] doctrine is . . . applied as a complete defense to litigation commenced by persons who have been aggrieved by action taken in an administrative proceeding which has occurred in fact, but who have failed to 'exhaust' the remedy against such action which is available to them in the course of the proceeding itself." (*Environmental Law Fund, Inc. v. Town of Corte Madera* (1975) 49 Cal.App.3d 105, 112.) In the context of CEQA, it effectively limits the standing of persons who can challenge agency actions in superior court. (*Tahoe*

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[4] The Neighbors' list of defective notices includes: (1) the April 9, 1999, notice of availability of the CRE/BCC DEIR ("First Notice"); (2) the notice of public hearing on July 13, 2000, regarding the FEIR, general plan amendment, and rezoning for Cavitt Ranch Estates ("Second Notice"); (3) the corrected notice of the July 13, 2000, hearing ("Third Notice"); (4) notice of the September 19, 2000, board of supervisors' hearing on Cavitt Ranch Estates ("Fourth Notice"); (5) notice of the planning commission's October 11, 2000, hearing on Bayside's EIR and conditional use permit ("Fifth Notice"); and (6) the notice of the November 21, 2000, board of supervisors' hearing on Bayside ("Sixth Notice").

Vista Concerned Citizens v. County of Placer (2000) 81 Cal.App.4th 577, 591 (*Tahoe Vista*).)

The Legislature codified the exhaustion of administrative remedies doctrine in CEQA. (*Tahoe Vista, supra,* 81 Cal.App.4th at pp. 589-590; Stats. 1984, ch. 1514, § 14.5, p. 5345.) Section 21177, subdivision (a) provides: "No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." We conclude the Neighbors exhausted their administrative remedies as to all the notices except the First Notice.

The Neighbors concede they did not question deficiencies in the First Notice during the administrative proceedings. However, they argue exhaustion was not required because the First Notice failed to list any of the significant environmental effects related to the project. They rely on *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136 (*McQueen*), disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570, fn. 2. In that case, the district filed a notice of CEQA exemption for the acquisition of surplus federal property. The notice failed to mention there were hazardous materials stored on the property. (*McQueen, supra,* at pp. 1139, 1145.) The petitioner spoke about the project at a March 12 hearing, but raised no environmental

concerns. The district approved the purchase, and tentatively adopted an interim use and management plan for the property. (*Id.* at p. 1141.) The contamination was revealed in a letter from Colonel Hodge, an Air Force civil engineer, which was read at the district's April 16 meeting. Petitioner immediately questioned whether environmental review was required. Agency staff reiterated its view that the land acquisition was categorically exempt. The district proceeded to adopt the general use and management plan. (*Id.* at pp. 1141-1142.) Petitioner then submitted a written challenge to the staff's assertion that the project was exempt. (*Id.* at p. 1142.) The Court of Appeal reversed the trial court's denial of relief. (*Id.* at p. 1140.) Among other things, it rejected the district's contention that the petitioner failed to exhaust his administrative remedies based on the manner in which the district publicized its proposed acquisition. (*Id.* at pp. 1150-1151.) The court found "petitioner's situation tantamount to a lack of notice due to the incomplete and misleading project description employed by the district. While there is evidence the district gave notice of the proposed property acquisition, there is no evidence that the notice mentioned the acquisition of toxic, hazardous substances." (*Id.* at p. 1150.) The court specifically noted that "[p]etitioner questioned the district about Hodge's letter at its next meeting. When he was informed the project was categorically exempt, he wrote a letter challenging that determination." (*Id.* at p. 1151.) It

concluded the petitioner exhausted the limited administrative remedies available. (*Ibid.*)

The court in *Temecula Band of Luiseño Mission Indians v. Rancho Cal. Water Dist.* (1996) 43 Cal.App.4th 425, 434, read the *McQueen* exception narrowly to hold that "an incomplete or misleading notice may be treated as equivalent to *no* notice *only to the extent that the notice's deficiencies prevented the petitioner from invoking administrative remedies*. The petitioner still must raise the objections and exhaust the administrative remedies available at the time." (Emphasis in original and added.) We distinguish this case from *McQueen* on that basis. The significant environmental effects were set forth in the CRE/BCC DEIR, dated March 23, 1999. Here, the Neighbors could have raised the failure of the First Notice to list them at numerous times between April 1999 and certification of the FEIR in November 2000, but did not.

2. Waiver:

A party who fails to raise an issue in the trial court waives the right to do so on appeal. (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 117; *Association For Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 737.)

The Second, Third, and Fourth Notices involved the July 13, 2000, planning commission hearing on the Cavitt Ranch Estates FEIR, general plan amendment, tentative map, and variance, and the September 19, 2000, hearing before the board of supervisors. The board certified the CRE/BCC FEIR as to Cavitt Ranch Estates,

and Neighbors did not challenge the board's action within CEQA's 30-day limitations period. (§ 21167, subd. (c).) Having waived the issue as to Cavitt Ranch Estates, they may not raise it in their challenge to the Bayside proceedings.

Still to be considered are the alleged deficiencies in the Fifth and Sixth Notices. Although Neighbors did not raise the alleged notice violations in the statement of issues, they did address them in the body of their opening brief and in their reply brief. We conclude they are properly before us.

3. Confusing Notices:

An obvious purpose of the notice of public hearing is to encourage public participation, "an essential part of the CEQA process." (Guidelines, § 15201; see also Guidelines, § 15202.) However, "CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement." (Guidelines, § 15003, subd. (j).) The test is whether County made "'"an objective, good faith effort"'" to comply with CEQA's procedural requirements (*Fat*, *supra*, 97 Cal.App.4th at p. 1277), and if so, whether actual deficiencies in notice resulted in the omission of relevant information (*Rural Landowners*, *supra*, 143 Cal.App.3d at p. 1022).

The Neighbors argue the Fifth Notice of the October 11, 2000, planning commission hearing on the Bayside project, and the Sixth Notice of the November 21, 2000, board of supervisors' hearing on appeal of the planning commission decision, were misleading when read with the Second, Third, and Fourth Notices

of hearings on the Cavitt Ranch Estates project during the same period. They contend "[t]he notices were confusing and improper because they indicated that the Board of Supervisors was considering the same EIR as the Planning Commission at a time prior to the Planning Commission hearing." According to the Neighbors, "[p]eople did not know if they were required to attend the Cavitt-Ranch FEIR hearing to preserve their objections to the Bayside Church Project."

Contrary to the Neighbors' claim the notices were misleading, the Second, Third, Fourth, Fifth, and Sixth Notices named at the top of the notice the proposed project that was subject of the noticed hearing -- either Cavitt Ranch Estates or Bayside Covenant Church. Each of these notices included, in substance, the following statement: "Administrative remedies must be exhausted prior to action being initiated in a court of law. If you challenge *the proposed project* in court, you may be limited to raising only those issues you or someone else raised at *the public hearing described in this notice*, or in written correspondence delivered to the County at, or prior to, the public hearing." (Emphasis added.) We already explained that the Third Notice regarding the July 13, 2000, planning commission meeting on Cavitt Ranch Estates expressly stated that a separate public hearing would be noticed and conducted "to consider a separate environmental document for the Bayside Covenant Church and to consider the land use entitlement application for the Bayside Covenant Church project." Each

notice provided the planning department's telephone number in the event clarification was needed.

The Neighbors cite complaints about the notices, but do not claim any member of the public failed to read the CRE/BCC FEIR, or to attend the planning commission hearing or board of supervisors' hearing on Bayside as a result of the alleged confusion. Because the alleged deficiencies in notice did not result in the omission of relevant information, we conclude there was no prejudicial abuse of discretion. (*Rural Landowners, supra,* 143 Cal.App.3d at pp. 1020-1023; see also *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.*, *supra*, 210 Cal.App.3d at p. 174.)

D. Certification of the CRE/BCC FEIR:

Last on the Neighbors' list of procedural deficiencies is the claim County violated CEQA by certifying the same EIR twice. Again, the record reveals there was no prejudicial abuse of discretion.

Neighbors argue County failed to satisfy the substantive and procedural requirements for re-use of an existing EIR under Guidelines section 15153.[5] Because they failed to challenge the

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[5] Section 15153 of the Guidelines reads in part:

"(a) The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

"(b) When a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

purported re-use of an existing EIR under Guidelines section 15153 during the administrative proceedings, we will not consider the issue. (§ 21177, subd. (a).) In any event, County's certification of the CRE/BCC FEIR did not involve "re-use" of an EIR. County simply certified the Cavitt Ranch portion of the FEIR in one set of administrative proceedings not before us in this appeal, and the Bayside Covenant Church portion of the FEIR in a second set of administrative proceedings. We already concluded County did not abuse its discretion by including both projects in the EIR in the first instance.[6] The Neighbors fail to cite any CEQA provision that prohibits the procedure followed by County.

The Neighbors nonetheless complain County's inclusion of both projects in the same FEIR created widespread public confusion. They cite a letter from Elton and Judy Olson suggesting that "more concerned home owners would have been present at the Planning Commission hearing [on Cavitt Ranch Estates] on 7-13-2000 if they had understood the EIR and what

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"(1) The lead agency shall review the proposed project with an initial study, . . . [¶] . . . [¶]

"(2) If the lead agency believes that the EIR would meet the requirements of Subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum: [¶] . . . [¶]

"(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project; . . ."

[6] See discussion, *ante* at pages 14-16.

was involved." The Neighbors suggest it was unlikely the Bayside project received a thorough review once the board of supervisors certified the CRE/BCC FEIR for the Cavitt Ranch project.

Based on the record, including the transcript of the November 21, 2000, hearing before the board of supervisors, we find nothing to show the process discouraged public participation. The Olsons' comment was speculative, and referred to attendance at the July 13, 2000, planning commission hearing to consider Cavitt Ranch Estates. The November 21, 2000, board of supervisors' hearing focused entirely on the details of the Bayside Covenant Church portion of the FEIR. The board heard extensive public comment, including a lengthy presentation by the Neighbors' representative. Moreover, the County's practical decision not to restart environmental review of the Bayside portion of the EIR after the change in property ownership is consistent with the CEQA policy encouraging agencies to carry out environmental review "in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment." (§ 21003, subd. (f).)

III

The Project Description

Next, the Neighbors argue County violated CEQA by approving a project different from the one it subjected to environmental

review. The argument is odd in light of the fact the informed public opposition to a "mega-church" by groups like the Neighbors likely influenced Bayside's decision to revise their plans.

The Neighbors' principal complaint is that Bayside withdrew phase II of its original plan to construct 173,000 square feet of church facilities "without public notice" at the November 21, 2000, board of supervisors' meeting, and substituted a single phase I involving 94,500 square feet of building space. The Neighbors contend the alternatives considered in the EIR did not address foreseeable impacts of a smaller church on hydrology and traffic. They also argue the EIR failed to evaluate changed lighting plans.

County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 192-193, explains that "[a] curtailed or distorted project description may stultify the objectives of the [CEQA] reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the 'no project' alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."

This does not mean that every change in project description requires a new EIR. Courts subject the Guidelines "'to a construction of reasonableness and the court will not seek to

impose unreasonable extremes or to inject itself within the area of discretion as to the choice of action to be taken.'" (*Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1040 (*Dusek*).) Thus, according to the *Dusek* court, "[d]ecisionmakers should have the flexibility to implement that portion of a project which satisfies their environmental concerns." (*Id.* at p. 1041.)

In *Dusek*, the court affirmed the trial court's denial of the property owners' petition for writ of mandate, concluding that the agency did not abuse its discretion in approving demolition of the Pickwick Hotel, a project smaller than the one evaluated in the EIR. (173 Cal.App.3d at pp. 1035, 1039.) The court emphasized that an EIR "must serve as the 'alarm bell' alerting the agency to potential adverse environmental impacts arising from projects." (*Id.* at pp. 1036-1037.) It found that the 1983 EIR, which encompassed the broad redevelopment plan envisioned in the area, "rang the environmental alarm bell loud and clear" on the proposed hotel demolition. (*Id.* at pp. 1034, 1038.) "Every reader was dramatically alerted to the recommended irretrievable loss of the Pickwick." (*Id.* at pp. 1038-1039.) The court concluded that there is no abuse of discretion where public attention is properly focused on the smaller project and interested parties have the opportunity to voice their environmental concerns. (*Id.* at p. 1041.)

The Neighbors attempt to distinguish *Dusek*, arguing the Bayside project was significantly different from Alternative 8, the reduced scale church evaluated in the EIR. They say there

is insufficient evidence to support the board's finding that the project as approved is generally consistent with Alternative 8. However, *Dusek* makes clear the controlling issue is the adequacy of the EIR as an informative document with respect to the project as approved. Here, the EIRs provided adequate information on the impact of a smaller project on the hydrology and traffic.

With respect to hydrological impacts, the record shows that as originally proposed, phase II included installation of three culverts under Sierra College Boulevard to lower the 100-year flood elevation. The smaller, approved project required none. The CRE/BCC DEIR demonstrated that the absence of culverts in the no project alternative and smaller church alternative would result in continued problems of localized flooding upstream of Sierra College Boulevard until the flood control district was able to install two culverts at the project site. There is nothing in the record to suggest the Bayside project had any impact on those existing problems. Instead, County saw the larger, two-phase development with its installation of three culverts as a general "flood protection benefit," that would alleviate the need for construction by the flood control district. We conclude the record places the culverts in the proper context, and additional study was unnecessary.

The Neighbors challenge as unfounded the assumption that a smaller church would reduce the number of daily car trips associated with the project, and have the same or less impact on traffic. They explain that "[t]he reason that the smaller

church may have more severe traffic impacts is that if the Church increases the number of Sunday morning services because of its smaller size, there will be less time between services and more conflict between traffic coming to the Church and leaving the Church." The Neighbors fail to mention that approval of the project was conditioned on a 40-minute break between Sunday morning services.

We also reject the Neighbors' assertion that the increase in project lighting outlined in plans submitted *after* the board certified the FEIR "demonstrate[s] that the EIR did not adequately describe the lighting impacts of Project and the EIR did not 'provide an informed and accurate analysis of the project and its impacts.'" The EIR addressed the question of lighting, and the County applied its design standard to condition project approval. Plans submitted after that date had no bearing on the question whether County abused its discretion in reviewing lighting plans in the first instance.

IV

Evaluation of Project Impacts

The Neighbors argue County abused its discretion in approving the project despite inadequate analysis of traffic volume, safety, and parking. They also argue there is insufficient evidence to support County's findings on mitigation. We conclude there was no abuse of discretion.

A. The Threshold of Significance:

"Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the

determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." (Guidelines, § 15064.7.)

Appendix A to Placer County Zoning Code section 18.12.050, subdivision B states that a traffic impact is significant if it would: (1) cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system; (2) generate a type of traffic for which affected routes have not been designed or are otherwise not suitable; and (3) cause or exacerbate a potential traffic hazard. The General Plan established level of service (LOS) C as the minimum level of service for rural and urban/suburban roadways that are not within one-half mile of state highways. County may not approve a development project unless the project and County plans for street improvement at the site preserve LOS C.

The FEIR assessed traffic and circulation impacts in accordance with County standards for maintaining LOS C and complying with safety criteria. The FEIR used a standard analysis based on the number of vehicles per hour, but also assessed Sunday morning impacts at 30-minute, 15-minute, 10-minute, and 5-minute intervals. Based on the one-hour standard, the FEIR found that the Bayside project would have significant environmental impact on traffic -- both weekdays

and Sundays -- before mitigation. It determined that the impact would be less than significant after mitigation. Mitigation included future street improvements. County did not recommend mitigation at the intersection of Cavitt-Stallman Road and Sierra College Boulevard, a location that operated at LOS F during peak periods with or without the Bayside project.

The Neighbors maintain County found no traffic impact after mitigation by improperly averaging the traffic data over a one-hour period over the entire neighborhood. Relying on a Caltrans (State Department of Transportation) definition of "significant impact," they argue *any* slippage to LOS D, E, or F is significant, "even if the slippage occurs at an intersection or roadway that is already below LOS C and without regard to whether the slippage lasts for a full hour." The Neighbors also maintain the FEIR ignored traffic impacts on Sundays.

We begin by noting the Neighbors confuse methods with standards. The record indicates that the number of vehicles per hour is a generally accepted method used in traffic analysis, and the Neighbors offer no evidence to the contrary. They acknowledge the GBCP allows temporary slippage below LOS C "until funding is secured for required mitigation."

With respect to the traffic impact at the intersection of Cavitt-Stillman Road and Sierra College Boulevard -- which operates at LOS F with or without the project -- the GBCP and General Plan give County discretion not to apply the LOS C standard under certain conditions. The Neighbors do not challenge the sufficiency of the evidence that informed the

County's exercise of discretion not to apply the LOS C standard at this intersection. County did, in fact, consider and address Sunday traffic impacts in the FEIR and conditional use permit.

B. The Baseline Traffic Figure:

Guidelines section 15125, subdivision (a) states: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will *normally* constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. . . ." (Emphasis added.) Here, County issued its notice of preparation on December 3, 1997. The CRE/BCC DEIR used a January 1999 traffic study based on weekday traffic counts performed in December 1997 and Sunday traffic counts collected in September 1998.

Citing *Save Our Peninsula Committee v. Monterey County Bd. of Supervisor*s (2001) 87 Cal.App.4th 99, 126 (*Save Our Peninsula*), the Neighbors maintain County abused its discretion by using obsolete data to assess traffic impact. Based on informal observations by local residents, they argue County's data underestimated peak afternoon volumes on weekdays and volumes of summer traffic on Sundays. The Neighbors also contend County should have used statistical projections from the date of collection to account for future traffic growth.

Save Our Peninsula states that "the date for establishing baseline cannot be a rigid one. . . . In some cases, conditions closer to the date the project is approved are more relevant to a determination whether the project's impacts will be significant. [Citation.] For instance, where the issue involves an impact on traffic levels, the EIR might necessarily take into account the normal increase in traffic over time. Since the environmental review process can take a number of years, traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline against which to measure the impact of the project." (87 Cal.App.4th at pp. 125-126.) However, the court in *Save Our Peninsula* found recent data on water usage did not represent the normal usage over time, and concluded the EIR was inadequate in the circumstances of that case. (*Id.* at pp. 126, 128.)

We agree with Bayside's observation that environmental review involves a series of steps taken over a period of time, and, as a practical matter, "[s]ome point in time must be chosen to fix the baseline and proceed to analysis, . . ." Here the DEIR and FEIR acknowledged that other agencies' data and models differed from County's. This does not mean there is insufficient evidence to support the baseline selected by County. It is not our role to reweigh competing technical data or arguments. (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 393.) We conclude County's use of a January 1999 traffic study based on data collected in 1997 and 1998 represents "an objective, good faith effort" to comply with Guidelines section 15125 in

setting the baseline for traffic impacts. (*Fat*, *supra*, 97 Cal.App.4th at p. 1277.)

C. Traffic Safety Impacts:

County stated in its findings that traffic safety significance criteria were "based upon Project conformity to accepted design standards and guidelines" as established by local, state, and federal agencies. The Neighbors contend the County abused its discretion in failing to specify applicable safety standards or undertake a safety study of the impact of increased traffic. They say that "[s]ince the significant safety impacts were never identified in the EIR, it is impossible to determine whether the general traffic standards adopted by the County mitigate these impacts." They insist it is not enough for County to argue that "the Project would be built to standards, and that deferred mitigation based upon performance standards is acceptable."

County did not conduct a safety study or discuss general safety issues in the FEIR. It did, however, describe specific safety measures in its response to public comment. County stated that roadway improvements to accommodate predicted volumes complied with design standards. One mitigation measure required Bayside to design and construct a safe and efficient church entrance. County cited onsite pedestrian facilities, including routes leading to signalized crossings on Sierra College Boulevard, in response to a comment that analysis of pedestrian safety was inadequate. It also explained there was no significant environmental issue associated with shifting

location of a proposed church driveway onto Cavitt-Stallman extension. "The mitigation [was] construction of the driveway." These exchanges show County addressed the variety of safety concerns raised by the public. The Neighbors cite nothing in the record to show a formal safety study was also required. For purposes of CEQA, "[s]ubstantial evidence is not argument, speculation, [or] unsubstantiated opinion . . . ." (§ 21080, subd. (e)(2).)

CEQA provides that mitigation "may specify performance standards . . . which may be accomplished in more than one specified way." (Guidelines, § 15126.4, subd. (a)(1)(B).) With respect to deferred mitigation, the lead agency is required to monitor conditions of project approval adopted to mitigate or avoid significant effects on the environment. (§ 21081.6, subd. (a)(1); Guidelines, § 15097, subd. (a).) A leading treatise on CEQA observes that "[t]he evolving consensus seems to be that . . . deferral is permissible where the adopted mitigation measure (i) commits the agency to a realistic performance standard or criterion that will ensure the mitigation of the significant effect, and (ii) disallows the occurrence of physical changes to the environment unless the performance standard is or will be satisfied." (Remy et al., Guide to the Cal. Environmental Quality Act (10th ed. 1999) p. 425.) The Neighbors fail to show that County's performance standards and criteria are unrealistic in the circumstances of this case.

D. Inadequate Parking:

As approved, the Bayside project included 883 parking spaces. The Neighbors estimate that based on an average of 2.25 persons per vehicle on Sundays, 1,111 parking spaces would be needed for an event for 2,500 people. They complain that "[t]he EIR did no analysis of the impacts that lack of parking would have on traffic and safety, other than to note that if parking impacts do occur, additional street parking restrictions [could] be imposed on the neighborhood." The Neighbors insist County's response is inadequate.

The Bayside project complies with the County's objective standards for church parking, which "ensure compatibility with adjacent land uses." We therefore conclude there is sufficient evidence to support the FEIR's parking analysis.[7]

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[7] In *Communities For A Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 105, 114 (*CBE*), we upheld the trial court's invalidation of Guidelines section 15064, subdivision (h), finding it "inconsistent with controlling CEQA law governing the fair argument approach." (*CBE, supra,* at p. 114.) This section provided guidance in the use of "standards," including "thresholds of significance adopted by lead agencies" in the initial decision whether to prepare a negative declaration or EIR. (Guidelines, § 15064, subd. (h).) "[A] public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.'" (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1123.)

At oral argument, counsel for the Neighbors discussed the impact of *CBE* on County's assessment of parking impact, and Bayside's claim it had complied with section 15064, subdivision (h) of the Guidelines. Even if County based its certification on the standards referred to in that provision, there is no evidence of the harm identified in *CBE*, that is, "the

E. Specific Traffic Findings:

The Neighbors challenge the finding of no significant cumulative impact as mitigated, citing the absence of mitigation measures at three locations: (1) Cavitt-Stallman Road and Sierra College Boulevard (LOS F during peak hours now and in the future with or without project); (2) East Roseville Parkway and Olympus (LOS D during peak hours in the future with or without project); and (3) Douglas Boulevard east of Sierra College Boulevard (LOS F on Sundays in the future). They also say mitigation will be ineffective at the intersection of Sierra College Boulevard and Douglas Boulevard (LOS E during peak hours now; LOS C on Sundays with mitigation). Neighbors also contend fee based mitigation is ineffective at locations where no mitigation is proposed absent evidence the mitigation will actually occur. (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at p. 140.)

The Neighbors offer no evidence to counter County's findings that no mitigation was required at Sierra College Boulevard and Cavitt-Stallman Road, East Roseville Parkway and Olympus Drive, and Douglas Boulevard east of Sierra College Boulevard. With respect to the intersection of Douglas

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application of an established regulatory standard in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect." (*CBE*, *supra*, 103 Cal.App.4th at p. 114, emphasis in original.) Indeed, Bayside reduced the number of proposed parking places from 2,000 to the number required under County standards *in response to community input*. Moreover, adequate parking was an issue addressed by the County in the review process.

Boulevard and Sierra College Boulevard, the EIR and traffic study provide substantial evidence to support the conclusion that the required physical improvements mitigated the impact of Bayside's project.

Section 15130 of the Guidelines provides that an EIR may determine that a project's contribution to a cumulative impact is mitigated by requiring it "to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact." (Guidelines, § 15130, subd. (a)(3).) Here the FEIR requires Bayside to pay substantial traffic fees to County's program for improvement of area-wide roadways and intersections. Moreover, the record shows the GBCP established an effective traffic fee program, and County has implemented many of its concrete objectives. We therefore conclude there is substantial evidence of mitigation under *Save Our Peninsula*, *supra*, 87 Cal.App.4th at pp. 139-141.)[8]

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[8] At oral argument, counsel for the Neighbors also pointed out that *CBE* invalidated Guidelines section 15130, subdivision (a)(4) which states: "An EIR may determine that a project's contribution to a significant cumulative impact is de minimus and thus is not significant. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented." The problem with Guidelines section 15130, subdivision (a)(4) was that it "measure[d] a proposed project's de minimus incremental impact relative to the existing cumulative impact, rather than . . . on the combined effects of these impacts." (*CBE*, *supra*, 103 Cal.App.4th at p. 121.) Here, there was no finding that the impacts were de minimus. More importantly, the County evaluated the substance of the impacts -- based on existing conditions and projected future conditions -- and found they were less than significant as mitigated.

F. Analysis of Visual Impact:

There is no merit in the Neighbors' claim the EIR failed to provide adequate analysis of visual impact. The standard of significance for visual impact included whether the project would create "a major obstruction to a public view." The EIR noted it was unlikely views would be obstructed given the elevation of the site and proposed limitations on building height. The EIR acknowledged it was possible "that views of the Sierra Nevada from individual homes west of Sierra College Boulevard could be obstructed by the proposed structures." The Neighbors offer no evidence or relevant legal authority for their assertion the possible visual impact on a few houses was "major." The record supports County's conclusion to the contrary.

G. Identification of Endangered Species:

The Neighbors acknowledged that in order to expedite environmental review, the EIR presumed the presence of vernal pool shrimp and provided for mitigation through off-site banking. The Neighbors contend "[t]he record is devoid of any evidence that the banking will mitigate the loss of the presumed special status species." They say it is impossible to design a mitigation measure for loss of vernal pool shrimp without completing the two-year field study. The only question is whether there is substantial evidence to support the EIR's finding of mitigation. (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 409.)

The GBCP approves off-site banking as a functional mitigation measure. In addition, the United States Fish and Wildlife Service determined that "by using banks, implemented mitigation [would] lead to the development of areas distributed across the landscape that local communities [could] use as foundations for future habitat conservation plans." It offered a formula for off-site banking in this case. The CUP increased the suggested number of credits, stating that "at least 2:1 credit shall be dedicated within a Service-approved ecosystem preservation bank," and "at least 1:1 credit shall be dedicated within a Service-approved vernal pool creation bank." We conclude there is sufficient evidence to support a finding off-site banking provided adequate mitigation for assumed loss of species.

V

Inconsistency With the GBCP and General Plan

Each county and city must adopt a comprehensive, long-term General Plan for its physical development which becomes the "constitution" for all future development. (*Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336 (*Families Unafraid*).) The Placer County zoning ordinance requires conditional use permits to be consistent with the General Plan and any applicable community plan. (Placer County Code, § 17.02.020, subd. B.) "'An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their

attainment.'" (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994, citing General Plan Guidelines, p. 212, Governor's Office of Planning and Research, 1990.) Inconsistency with a single policy of a general plan is enough to invalidate a finding of consistency where the policy at issue is "fundamental, mandatory and specific," and there is no evidence to the contrary. (*Families Unafraid*, *supra*, at pp. 1341-1342.) However, the board of supervisors has broad discretion to interpret its general plan "because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity." (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at p. 142; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717 (*Sequoyah Hills*).) "To overcome that presumption, an abuse of discretion must be shown." (*Ibid.*)

County stated that "[w]hile the EIR concludes that the Proposed Project's impact on land use is significant and unavoidable, the Board of Supervisors finds that the Project is, in balance, consistent with the goals and policies of the GBCP." The Neighbors disagree, and invite us to set aside Bayside's approval. They say Bayside Covenant Church "is inconsistent with the GBCP's fundamental purpose of retaining Granite Bay's rural quality and specifically the RE [rural estate] land use designation." The Neighbors insist "[t]he Bayside is not a 'rural' church. . . . [I]t will be the size of a WalMart . . . ." Their generalized claim of incompatibility does not

warrant reversal where they fail to cite a GBCP policy that is "fundamental, mandatory and specific." (*Families Unafraid*, *supra*, 62 Cal.App.4th at pp. 1341-1342.)

Here the record reveals that the board of supervisors considered the applicable policies of the GBCP in approving the Bayside project. Gina Langford, a senior planner with the planning department, told the board of supervisors at the start of the November 21, 2000, hearing that Bayside met the requirements of the RE zoning designation. She then focused the board's attention on the broader policy issue: "What is of concern today is how the project is designed in its size and scale that may exceed that envisioned by the Granite Bay plans policies regarding maintaining the rural character and compatibility with adjoining uses."

The GBCP's 71 goals and 214 policies cover a broad range of issues. The "Land Use Element" lists several goals relevant to the board of supervisors' decision to certify the EIR and approve the CUP. Goal 1 states: "Preservation of the unique character of the Granite Bay area, which is exemplified by the general rural environment, *mix of land uses and densities*, and high quality of development, is a major goal of the plan." (Emphasis added.) Goal 2 provides: "The rural-residential quality of the area should be preserved through *the maintenance of a balance* of rural (relating to the country, openness, at least 2-1/2 acre lots) and residential development." (Emphasis added.) Goal 7 also recognizes that "[p]ublic services and facilities *must* be available to serve the needs created by the

present and future development which occurs in the plan area." (Emphasis added.) The Land Use Element Goal 7 is consistent with General Community Goal 5 "[t]o provide the civic, cultural and recreational facilities and activities needed by the community, which encourage the interaction of residents in the pursuit of common interests and which result in a strong sense of community identity."

The court in *Sequoyah* stated the obvious: "[N]o project could completely satisfy every policy stated in [a general plan], and . . . state law does not impose such a requirement." (23 Cal.App.4th at p. 719.) In that case, the evidence showed the project at issue was fully consistent with at least 14 of 17 policies that were deemed pertinent. (*Ibid.*) The court continued: "A general plan must try to accommodate a wide range of competing interests -- including those of developers, neighboring homeowners, prospective homebuyers, environmentalists, current and prospective business owners, jobseekers, taxpayers, and providers and recipients of all types of city-provided services -- and to present a clear and comprehensive set of principles to guide development decisions. Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be 'in harmony' with the policies stated in the plan. [Citation.] It is, emphatically, *not* the role of the courts to micromanage these development decisions. Our function is simply to decide whether the city officials considered the applicable policies and the extent to which the

proposed project conforms with those policies, whether the city officials made appropriate findings on this issue, and whether those findings are supported by substantial evidence." (*Id.* at pp. 719-720, emphasis in original.) We conclude there was no abuse of discretion in the case before us.

DISPOSITION

The judgment is affirmed. (CERTIFIED FOR PARTIAL PUBLICATION.)

CALLAHAN, J.

We concur:

SIMS, Acting P.J.

RAYE, J.